

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
SUN MICROSYSTEMS OF CALIFORNIA LTD.)
22th Floor, Shul on Centre)
8 Harbour Road)
Wan Chai, Hong Kong,)
)
Respondent)

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Sun Microsystems of California Ltd. (Sun Microsystems) of its intention to initiate an administrative proceeding against Sun Microsystems pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations),² based on allegations that, on or about September 24, 1993, Sun Microsystems

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

² The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

arranged for the shipment of Sun sparcservers, sparcstations or workstation, including related equipment, software and peripherals, knowing or having reason to know that the shipment was contrary to the conditions on the license BXA issued for the export, in violation of Sections 787.2 and 787.4(a) of the former Regulations, and that, on or about October 20, 1993, Sun Microsystems arranged for the shipment of Sun workstations representing that the shipment was authorized under a BXA validated license, when, in fact, the shipment was not authorized under the BXA license, in violation of Section 787.2 of the former Regulations; and

BXA and Sun Microsystems having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$30,000 is assessed against Sun Microsystems, which shall be paid to the U. S. Department of Commerce within 30 days from the date of this Order. Payment shall be made in the manner specified in the attached instructions.


SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1999)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Sun Microsystems will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that, as authorized by Section 11(d) of the Act, the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing

validity of any export license, permission, or privilege granted, or to be granted, to Sun Microsystems. Accordingly, if Sun Microsystems should fail to pay in a timely manner the civil penalty set forth above, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of Sun Microsystems' export privileges for a period of one year from the date of this Order.

FOURTH, that the proposed Charging Letter, Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


F. Amanda DeBusk
Assistant Secretary
for Export Enforcement

Entered this 21st day of June, 1999.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
SUN MICROSYSTEMS OF CALIFORNIA LTD.)
22th Floor, Shul on Centre)
8 Harbour Road)
Wan Chai, Hong Kong,)
)
Respondent)

SETTLEMENT AGREEMENT

This Agreement is made by and between Sun Microsystems of California Ltd. (Sun Microsystems) and the Bureau of Export Administration, United States Department of Commerce, pursuant to Section 766.18(b) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act).²

¹ The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

Whereas, the Office of Export Enforcement, Bureau of Export Administration (BXA), has notified Sun Microsystems of its intention to initiate an administrative proceeding against Sun Microsystems pursuant to the Act and the Regulations, based on allegations that, on or about September 24, 1993, Sun Microsystems arranged for the shipment of Sun sparcservers, sparcstations or workstation, including related equipment, software and peripherals, knowing or having reason to know that the shipment was contrary to the conditions on the license BXA issued for the export, in violation of Sections 787.2 and 787.4(a) of the former Regulations, and that, on or about October 20, 1993, Sun Microsystems arranged for the shipment of Sun workstations representing that the shipment was authorized under a BXA validated license, when, in fact, the shipment was not authorized under the BXA license, in violation of Section 787.2 of the former Regulations;

Whereas, Sun Microsystems has reviewed the proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement and the Order; it enters into this Settlement Agreement voluntarily and with full knowledge of its rights, and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

Whereas, Sun Microsystems neither admits nor denies the allegations contained in the proposed Charging Letter;

Whereas, Sun Microsystems wishes to settle and dispose of all matters alleged in the proposed Charging Letter by entering into this Settlement Agreement; and

Whereas, Sun Microsystems agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

Now Therefore, Sun Microsystems and BXA agree as follows:

1. BXA has jurisdiction over Sun Microsystems, under the Act and the Regulations, in connection with the matters alleged in the proposed Charging Letter.
2. BXA and Sun Microsystems agree that the following sanction shall be imposed against Sun Microsystems in complete settlement of all alleged violations of the Act and the former Regulations set forth in the proposed Charging Letter:
 - (a) Sun Microsystems shall be assessed a civil penalty of \$30,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of an appropriate Order;
 - (b) As authorized by Section 11(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Sun Microsystems. Failure to make timely payment of the civil penalty shall result in the denial of all of Sun Microsystems' export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.
3. Sun Microsystems agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an

administrative hearing regarding the allegations in the proposed Charging Letter; (b) to request a refund of the civil penalty imposed pursuant to this Settlement Agreement and the appropriate Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any further administrative proceedings against Sun Microsystems in connection with any violations of the Act or the Regulations arising out of the transactions identified in the proposed Charging Letter.

5. Sun Microsystems understands that BXA will make the proposed Charging Letter, this Settlement Agreement and the appropriate Order, when entered, available to the public.

6. BXA and Sun Microsystems agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(b) of the Regulations, BXA and Sun Microsystems agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve

to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

SUN MICROSYSTEMS OF
CALIFORNIA LTD.

BY: Mark D. Menefee
Mark D. Menefee
Director
Office of Export Enforcement

BY: Michael H. Morris
Michael H. Morris
General Counsel, Sun Microsystems, Inc.
Director/Officer, Sun Microsystems of
California Ltd.

Date: 6/18/99

Date: June 16, 1999



REGISTERED MAIL - RETURN RECEIPT REQUESTED

Sun Microsystems of California Ltd.
22th Floor, Shul on Centre
8 Harbour Road
Wan Chai, Hong Kong

Attention: Daniel Wang Tak Yu
Managing Director

Dear Mr. Yu:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described in detail below, Sun Microsystems of California Ltd. (Sun Microsystems) has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act).²

Facts constituting violations:

Charges 1-2

On or about September 24, 1993, Sun Microsystems arranged for the shipment of Sun sparcservers, sparcstations or workstations, including related equipment, software and peripherals, to China Xiao Feng Technology & Equipment Company (China Xiao Feng). At the time of the shipment, Sun Microsystems knew or had reason to know that the shipment of

¹ The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

the goods to China Xiao Feng was contrary to the conditions on the validated license D181396 issued by BXA for the export. BXA alleges that, in so doing, Sun Microsystems caused, aided or abetted the doing of an act prohibited by the Act or any regulation, order, or license issued thereunder, and thereby committed one violation of Section 787.2 of the former Regulations. BXA also alleges that, by arranging for the transport of commodities from the United States with knowledge or reason to know that a violation of the Act or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur, Sun Microsystems committed one violation of Section 787.4(a) of the former Regulations.

Charge 3

On or about October 20, 1993, Sun Microsystems arranged for the shipment of Sun workstations from the United States to the People's Republic of China representing that the shipment was authorized under BXA validated license D178585. In fact, the shipment was not authorized under that license. BXA alleges that, in so doing, Sun Microsystems caused, aided or abetted the doing of an act prohibited by the Act or any regulation, order, or license issued thereunder, and thereby committed one violation of Section 787.2 of the former Regulations.

BXA alleges that Sun Microsystems committed two violations of Section 787.2 and one violation of Section 787.4(a), for a total of three violations of the former Regulations, each of which involved commodities controlled for reasons of national security under Section 5 of the Act.

Accordingly, Sun Microsystems is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation or, for a violation of national security controls, \$100,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Sun Microsystems fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

Sun Microsystems is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a consent settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, Sun Microsystems' answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Sun Microsystems' answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Mi-Yong Kim, Esq." below the address. Ms. Kim may be contacted by telephone at (202) 482-5311.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

Enclosure